

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION IV

CA 07-84

MAY 30, 2007

JASON PHILLIPS and AMBER EVANS
APPELLANTS

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT, [NO. JV-05-188]

V.

HONORABLE MARK HEWETT,
JUDGE

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES

APPELLEE

AFFIRMED

Appellant Jason Phillips appeals from an order terminating his parental rights to his three children, K.P., d/o/b 7-9-02, J.P., d/o/b 7-1-03, and T.P., d/o/b 8-21-04.¹ For reversal, Mr. Phillips argues that (1) the trial court erred in finding that termination was in the children's best interest and that one of the statutory grounds was proven; (2) the trial court erred in finding that the Arkansas Department of Health and Human Services provided reasonable efforts and services to reunify the family; and (3) the trial court erred in finding that an appropriate permanency plan exists and that the children are likely to be adopted. We find no error, and we affirm.

¹The children's mother also had her parental rights terminated, but she is not a party to this appeal.

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Dinkins v. Arkansas Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Termination of parental rights is an extreme remedy and is in derogation of the natural rights of the parents. *Id.* However, parental rights should not be allowed to continue to the detriment of children's welfare and best interest. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

In the instant case, the trial court terminated Mr. Phillips's parental rights pursuant to the following provisions of Ark. Code Ann. § 9-27-341(b) (Supp. 2005):

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

Our law is well settled that when the burden of proving a disputed fact in an equity court is by clear and convincing evidence, we will not reverse the trial court's finding unless clearly erroneous. *Larscheid v. Arkansas Dep't of Human Servs.*, 343 Ark. 580, 36 S.W.3d 308

(2001). Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction as to the allegation sought to be established. *Id.*

This case began on March 10, 2005, when ADHHS took an emergency hold of the children due to environmental neglect. On that day, an ADHHS worker investigated the apartment where Mr. Phillips lived with his children and the children's mother in Fort Smith. The home was filthy and not suitable to live in. The children remained in ADHHS custody and subsequent to a hearing held April 15, 2005, the trial court entered an order adjudicating the children dependent/neglected on September 22, 2005. The trial court ordered DNA testing to determine the paternity of the children, and at a September 27, 2005, review hearing, the trial court declared that Mr. Phillips is the father of the children. This finding was memorialized in an order entered February 3, 2006, which directed Mr. Phillips to pay \$35 per week in child support, complete parenting classes, submit to a drug and alcohol assessment, maintain suitable housing and employment, and visit the children weekly.

On May 4, 2006, the trial court entered a permanency planning order that changed the goal of the case from reunification to termination of parental rights. In that order, the trial court found that neither parent had complied with the case plan or made any progress whatsoever. A petition to terminate parental rights was filed by ADHHS on August 2, 2006. After the termination hearing held September 25, 2006, the trial court entered the order terminating Mr. Phillips's parental rights on November 7, 2006.

Mr. Phillips testified on his own behalf at the termination hearing. He stated that he moved to Atkins, Arkansas, about a month and a half ago, where he lives with his mother in her house. Prior to that time, he had no stable residence, and “just lived with some friends around Fort Smith that would allow me to stay with them.” Mr. Phillips testified that he has maintained fairly steady employment, and that he recently changed jobs and was scheduled to begin his new job on the day after the termination hearing. Mr. Phillips indicated that his mother keeps a clean and suitable home, and that he planned to have a house of his own within a month so he could get his children back. Mr. Phillips stated that he completed parenting classes as well as a psychological evaluation, and that while he did not complete a drug and alcohol assessment, all of his drug screens were negative. Mr. Phillips testified that if his children were returned to his custody, he has a lot of family including his mother who are willing to assist in raising them.

Mr. Phillips acknowledged in his testimony that he is behind on his child-support obligation, having paid only sixty-one percent of what he was ordered to pay. He also admitted that he has not visited his children since he moved to Atkins to live with his mother. Prior to that time, Mr. Phillips attended visitation sporadically, and as of the time of the hearing he had made thirty-nine out of a possible seventy-six visits.

Caseworker Robbie McKay was assigned to this case, and she recommended termination of Mr. Phillips’s parental rights, stating, “At this point I do not see the parents making any significant progress that would cause me to conclude that they will be ready for

the children anytime in the foreseeable future.” Ms. McKay indicated that throughout the history of the case, ADHHS provided extensive services, including psychological evaluations, counseling referrals, referrals for drug and alcohol assessments, parenting classes, DNA testing, HUD referrals, transportation, home studies, visitation, foster care, and medical services for the children. As to the children’s prospects for adoption, Ms. McKay stated:

I see no reason to think that these children wouldn’t be readily adoptable. With my eleven years of experience as a caseworker I feel we can place these children in an adoptive placement with relative ease. I think it’s in their best interest at this point.

The appellant’s mother, Carolyn England, testified that she had requested a home study so she could receive the children in her home until Mr. Phillips is able to obtain his own housing. Mrs. England indicated that although she sees no reason why her son should not have custody of his children, she would be willing to allow them in her home on a permanent basis if his parental rights were terminated.

Mr. Phillips’s first argument on appeal is that the trial court clearly erred in finding that termination was in the children’s best interest, and clearly erred in finding that the children had been out of the home for twelve months and the conditions causing removal had not been remedied. Mr. Phillips notes that he was not declared the legal father of the children until the September 27, 2005, review hearing, and that the subsequent order declaring him to be the father was not entered until February 3, 2006. He asserts that since being adjudicated the father he has substantially complied with the case plan by completing parenting classes, completing a psychological evaluation, and remaining drug free. Mr. Phillips maintains that

he has currently has his life in order, and that with the help of his family he is in a position to finalize his plan and obtain a home for his children. Given his efforts to comply with the case plan and move toward reunification, Mr. Phillips contends that the trial court erred in failing to give him one more month as he requested at the termination hearing.

We hold that the trial court did not clearly err in finding one of the statutory grounds to support parental termination, i.e., § 9-27-341(b)(3)(B)(i)(a), or in finding that termination was in the children's best interest. Mr. Phillips was the putative father at the inception of this case, and had apparently acted as the children's father during the course of their lives as they shared his surname and were in his custody upon removal by ADHHS. While he was not officially declared to be the children's father until September 27, 2005, this was more than one year prior to the termination order entered November 7, 2006. Mr. Phillips was given ample time to remedy the conditions that caused removal, and the trial court committed no error in finding that he failed to do so.

The children were taken from Mr. Phillips's custody because they had not been given appropriate housing. Since that time, Mr. Phillips moved around frequently and still did not secure appropriate housing for the children by the time of the termination hearing, which was more than eighteen months after removal of the children. Moreover, he was starting a new job and was substantially behind in his obligation to support his children, and maintained visitation with the children on only about half of the scheduled visits, none of which came in the past month and a half. Under these circumstances there was no error in the trial court's findings

that a period of twelve months had elapsed since removal of the children, that Mr. Phillips failed to remedy the conditions that caused removal, and that termination of Mr. Phillips's parental rights was in the children's best interest.

Mr. Phillips's next argument is that the trial court erred in finding that ADHHS made reasonable efforts to provide services to the family. We do not agree. The trial court credited the testimony of caseworker Ms. McKay, who established that ADHHS provided numerous services evidencing a meaningful effort to rehabilitate the parent and correct the conditions that caused removal.

Mr. Phillips's remaining argument is that the trial court erred in finding that there was an appropriate permanency plan as required by Ark. Code Ann. § 9-27-341(b)(1)(A), and he specifically challenges the court's finding that the children are likely to be adopted. Mr. Phillips relies on the evidence that the children have been diagnosed with behavioral and developmental problems, and that there were no adoptive placements as of the time of the termination hearing.

The adoptability of the children is but one factor to consider in the overall termination of one's parental rights, and there is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *McFarland v. Arkansas Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). In this case Ms. McKay gave the opinion that, despite the problems facing the children, the children could be

placed for adoption “with relative ease.” Given this testimony, the trial court did not err in finding that the children are readily adoptable and that, under all of the circumstances presented, termination of parental rights was in their best interest.

Affirmed.

HART and GLADWIN, JJ., agree.